

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GONZALO ROMERO HERNANDEZ,
et al.,

Plaintiffs,

v.

CITY OF VALLEJO, et al.,

Defendants.

Case No. 2:25-cv-00900-CSK

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS AND STRIKE
(ECF No.10)

Pending before the Court are Defendants City of Vallejo, Jason Ta, Pablo Lopez, and Rosenda Mesa's motion to dismiss the First Amended Complaint ("FAC") in part and motion to strike pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(f). Defs. Mot. (ECF No. 10).¹ A hearing by Zoom was held on September 2, 2025.² (ECF No. 19.) Melissa Nold appeared as counsel for Plaintiffs and Katelyn M. Knight appeared as counsel for Defendants. (ECF No. 19.) For the reasons that follow, the Court GRANTS IN PART AND DENIES IN PART Defendants' motion. Defendants' motion to strike is GRANTED IN PART AND DENIED IN PART. Defendants' motion to strike paragraphs

¹ This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636(c) on the consent of all parties. (ECF Nos. 6, 7, 9.)

² The Court approved Plaintiffs' unopposed request to appear by video and the hearing on Defendants' motion to dismiss was transitioned to be held by Zoom. (ECF Nos. 15, 18.)

1 48, 53-65, 70-78, 94-108, 110-151, and the prayer for a consent decree, are GRANTED;
2 and Defendants' motion to strike Paragraphs 49-52, 66-69, 79-93 and 109 are DENIED.
3 Defendants' motion to dismiss is GRANTED IN PART AND DENIED IN PART.
4 Defendants' motion to dismiss Plaintiffs' claims against Defendant Chief Ta in his official
5 capacity are GRANTED with leave to amend; and Defendants' motion to dismiss
6 Plaintiffs' *Monell* claim (fourth cause of action) is GRANTED IN PART AND DENIED IN
7 PART. Plaintiffs' *Monell* claim on the basis of a custom or practice theory may proceed.
8 Plaintiffs' *Monell* claim on the basis of a ratification theory is DISMISSED with leave to
9 amend.

10 **I. BACKGROUND**

11 **A. Facts³**

12 On or about March 19, 2023, at approximately 2:45 a.m., married couple Plaintiffs
13 Daisy Romero and Gonzalo Romero Hernandez were passengers in a car driving
14 through the City of Vallejo. FAC ¶ 20 (ECF No. 4). Plaintiffs were passengers, asleep in
15 the back seat of the car when the driver, Miguel Maravillas, was involved in a minor car
16 accident. *Id.* ¶¶ 20-21. The car's safety system summoned law enforcement and
17 Defendants Lopez, Mesa and other unidentified Vallejo police officers arrived to the
18 scene of the accident. *Id.* ¶ 20. Plaintiff Daisy remained in the back seat of the car and
19 did not wake up when Plaintiff Gonzalo tried to get her up and out of the car. *Id.* ¶ 22.
20 Instead of checking on Plaintiff Daisy to see if she needed medical attention, "Vallejo
21 Police Officers began screaming at her, 'GET OUT OF THE CAR.'" *Id.* ¶ 23. Both
22 Plaintiff Gonzalo and Maravillas told officers that Plaintiff Daisy passed out and was not
23 awake or responsive. *Id.* ¶ 24. Plaintiff Gonzalo was not allowed to assist or help Plaintiff
24 Daisy. *Id.* Unidentified Vallejo police officers "violently dragged [Plaintiff Daisy] out of the

25 _____
26 ³ These facts primarily derive from the First Amended Complaint (ECF No. 4), which
27 are construed in the light most favorable to Plaintiffs, as the non-moving party. *Faulkner v. ADT Sec. Servs.*, 706 F.3d 1017, 1019 (9th Cir. 2013). However, the Court does not
28 assume the truth of any conclusory factual allegations or legal conclusions. *Paulsen v. CNF Inc.*, 559 F.3d 1061, 1071 (9th Cir. 2009).

1 car by the hair of her head and upper body," thereby waking up Plaintiff Daisy who was
2 shocked and terrified. *Id.* ¶ 25.

3 After being violently dragged out of the car, Plaintiff Daisy was slammed in a
4 seated position on the grass of the sidewalk while she cried out in pain, triggering her
5 pre-existing herniated disk and sciatic injury. FAC ¶ 26. Plaintiff Gonzalo began filming
6 the officers and verbally protested the mistreatment of Plaintiff Daisy despite Defendant
7 Lopez's attempts to prevent him from filming. *Id.* ¶¶ 27-28. Plaintiff Daisy was then
8 grabbed by Defendant Mesa from a "cross-legged position on the grass," thrown
9 forward, and her face, head and body were slammed into the street, while Plaintiff
10 Gonzalo cried out to the officers "what are you doing??" and to "leave her alone." *Id.*
11 ¶ 29. Plaintiff Daisy was held down by "other officer(s)" and Defendant Mesa straddled
12 her and an unidentified Vallejo police officer handcuffed Plaintiff Daisy while her face,
13 head and body were forced into the ground. *Id.* ¶ 31.

14 After placing Plaintiff Daisy in the patrol car, Defendant Mesa told Plaintiff
15 Gonzalo to back up. FAC ¶ 34. After Plaintiff Gonzalo complied and turned his back to
16 the officers, "multiple Vallejo police officers" pulled Plaintiff Gonzalo off his feet, dumped
17 him on his head face first into the concrete and slammed his head into the concrete
18 multiple times, scraping multiple layers of skin off his face. *Id.* ¶¶ 34-35. After Plaintiff
19 Gonzalo briefly ended up on his back, cellphone footage showed an unidentified Vallejo
20 police officer with his hands around Plaintiff Gonzalo's throat choking him. *Id.* ¶ 36.
21 Additional unidentified Vallejo police officers bent, abused and contorted Plaintiff
22 Gonzalo's body, flipped him over and violently handcuffed him. *Id.* After Plaintiff
23 Gonzalo's arrest, an unidentified Vallejo police officer tried to convince him that his
24 injuries were a result of falling. *Id.* ¶ 37.

25 Plaintiff Daisy was falsely arrested and charged for resisting arrest, and Plaintiff
26 Gonzalo was falsely arrested for felony battery on a police officer and a misdemeanor
27 resisting arrest. FAC ¶¶ 38-39. The Solano County District Attorney later dismissed the
28 charges. *Id.* ¶ 42.

1 In October 2023, Plaintiffs filed a formal complaint with the Vallejo Police
2 Department and requested an internal affairs investigation of the incident. FAC ¶ 44.
3 Plaintiffs have not received an outcome on their formal complaint. *Id.* Plaintiffs allege
4 they continue to suffer from “pain, fear, embarrassment, anxiety, stress and
5 disfigurement” resulting from the incident. *Id.* ¶¶ 40-41, 45.

6 **B. Procedural Posture**

7 On March 19, 2025, Plaintiffs filed the original complaint in this action. See
8 Compl. (ECF No. 1). On April 9, 2025, prior to the filing of a responsive pleading,
9 Plaintiffs filed the operative first amended complaint as a matter of right pursuant to
10 Federal Rule of Civil Procedure 15(a). See FAC. The FAC names Defendants City of
11 Vallejo; Chief Jason Ta in his official capacity; Officer Pablo Lopez in his individual
12 capacity; Officer Rosendo Mesa in his individual capacity; and Does 1-25. *Id.* ¶¶ 11-15.
13 The FAC alleges the following eight (8) causes of action: (1) 42 U.S.C. § 1983 claim for
14 excessive force in violation of the Fourth Amendment brought by Plaintiffs against
15 Defendants Lopez, Mesa, and Does 1-25; (2) 42 U.S.C. § 1983 claim for right to film in
16 violation of the First Amendment brought by Plaintiff Gonzalo against Defendants Lopez,
17 Mesa, and Does 1-25; (3) 42 U.S.C. § 1983 claim for unlawful seizure in violation of the
18 Fourth Amendment brought by Plaintiffs against Defendants Mesa, Lopez, and Does 1-
19 25; (4) 42 U.S.C. § 1983 claim under *Monell v. Dep't of Soc. Servs. of City of New York*,
20 436 U.S. 658 (1978), brought by Plaintiffs against Defendants City of Vallejo, Chief Ta,
21 and Does 1-25; (5) negligence claim brought by Plaintiffs against Defendants City of
22 Vallejo, Mesa, Lopez, and Does 1-25; (6) battery claim brought by Plaintiffs against
23 Defendants City of Vallejo, Mesa, Lopez, and Does 1-25; (7) excessive force claim in
24 violation of California Civil Code § 52.1 (referred to as the “Bane Act”) brought by
25 Plaintiffs against Defendants City of Vallejo, Mesa, Lopez, and Does 1-25; and (8) false
26 imprisonment and false arrest claim brought by Plaintiffs against Defendants City of
27 Vallejo, Mesa, Lopez, and Does 1-25. FAC ¶¶ 180-243.

28 Defendants move to dismiss all claims against Defendant Chief Ta and to dismiss

1 the fourth cause of action (*Monell*) for failure to state a claim upon which relief can be
2 granted pursuant to Federal Rules of Civil Procedure 12(b)(6). Defs. Mot. at 3, 8-9.
3 Defendants also move to strike paragraphs 48-151 of the FAC and Plaintiffs' prayer for a
4 consent decree pursuant to Federal Rules of Civil Procedure 12(f). *Id.* at 3-8. Plaintiffs
5 have filed an opposition, and Defendants have filed a reply. (ECF Nos. 14, 17.)

6 **II. LEGAL STANDARDS**

7 **A. Motion to Dismiss under Rule 12(b)(6)**

8 A claim may be dismissed because of the plaintiff's "failure to state a claim upon
9 which relief can be granted." Fed. R. Civ. P. 12(b)(6). A complaint fails to state a claim if
10 it either lacks a cognizable legal theory or sufficient facts to support a cognizable legal
11 theory. *Mollett v. Netflix, Inc.*, 795 F.3d 1062, 1065 (9th Cir. 2015). To state a claim on
12 which relief may be granted, the plaintiff must allege enough facts "to state a claim to
13 relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
14 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows
15 the court to draw the reasonable inference that the defendant is liable for the misconduct
16 alleged." *Ashcroft v. Iqbal*, 556 U.S. 678 (2009). When considering whether a claim has
17 been stated, the court must accept the well-pleaded factual allegations as true and
18 construe the complaint in the light most favorable to the non-moving party. *Mollett*, 795
19 F.3d at 1065. However, the court is not required to accept as true conclusory factual
20 allegations contradicted by documents referenced in the complaint, or legal conclusions
21 merely because they are cast in the form of factual allegations. *Paulsen*, 559 F.3d at
22 1071.

23 **B. Motion to Strike under Rule 12(f)**

24 Rule 12(f) grants the district court with authority to "strike from a pleading an
25 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."
26 Fed. R. Civ. Proc. 12(f). The purpose of a Rule 12(f) motion "is to avoid the expenditure
27 of time and money that must arise from litigating spurious issues by dispensing with
28 those issues prior to trial." *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th

1 Cir. 1983). Granting a motion to strike “may be proper if it will make trial less complicated
2 or eliminate serious risks of prejudice to the moving party, delay, or confusion of the
3 issues.” *Taheny v. Wells Fargo Bank, N.A.*, 2011 WL 1466944, at *2 (E.D. Cal. Apr. 18,
4 2011) (citing *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527-28 (9th Cir. 1993)). “Motions
5 to strike are disfavored and infrequently granted.” *Neveu v. City of Fresno*, 392 F. Supp.
6 2d 1159, 1170 (E.D. Cal. 2005) (citation omitted). Accordingly, “[m]otions to strike should
7 not be granted unless it is clear that the matter to be stricken could have no possible
8 bearing on the subject matter of the litigation.” *Id.* (quotation marks and citation omitted).

9 **III. DISCUSSION**

10 Defendants move to dismiss all claims against Defendant Chief Ta and to dismiss
11 the fourth cause of action (*Monell*) for failure to state a claim. Defs. Mot. at 3, 8-9.
12 Defendants also move to strike paragraphs 48-151 of the FAC and Plaintiffs’ prayer for a
13 consent decree. *Id.* at 3-8. The Court addresses Defendants’ arguments in turn.

14 **A. Motion to Strike**

15 The Court first addresses Defendants’ motion to strike. Defs. Mot. at 3-8. Plaintiffs
16 oppose the motion arguing the allegations in paragraphs 48-151 of the FAC are material
17 and pertinent to establish a pattern, custom, and/or practice in support of their *Monell*
18 claim. Pls. Opp’n at 8-11.

19 **1. Allegations Relating to Plaintiff’s Counsel**

20 Paragraphs 48, 61-62, 70-74, and 78 relate to Plaintiff’s counsel’s personal
21 interactions and experiences with Vallejo police officers and officials beginning from
22 2019. FAC ¶¶ 48, 61-62, 70-74, 78. These paragraphs do not support *Monell* liability and
23 have “no possible bearing on the subject matter of the litigation.” *Neveu*, 392 F. Supp. 2d
24 at 1170. The Court GRANTS Defendants’ motion to strike paragraphs 48, 61-62, 70-74,
25 and 78.

26 **2. Allegations Relating to Excessive Force and the Right to Film
27 Violations**

28 Paragraphs 49-53 relate to a prior incident in 2019 involving allegations of assault

1 and/or excessive force and the right to film during a traffic stop by Vallejo police officer
2 McLaughlin and subsequent attempts by Vallejo police officers to intimidate the victim
3 into not filing a grievance regarding the 2019 traffic stop. FAC ¶¶ 49-53. These
4 paragraphs involve allegations relating to constitutional violations, including excessive
5 force and the right to film, which appear to bear some factual similarity to the “subject
6 matter of the litigation” and may serve to support *Monell* liability in this matter. *Neveu*,
7 392 F. Supp. 2d at 117. The Court DENIES Defendants’ motion to strike paragraphs 49-
8 52.

9 **3. Allegations Relating to Racism and Hiring Deficiencies**

10 Paragraphs 54-56, 58-60, 63-65, 94-108, and 110-115 relate to prior incidents
11 involving Vallejo police officers that are alleged to be racially motivated, racially-
12 motivated “terror tactics” on community members, workplace discrimination of African
13 American Vallejo police officers, the California Department of Justice’s three-year
14 informal “Cooperative Agreement” with the Vallejo Police Department relating to its
15 history of racism and excessive force, and unlawful hiring practices that were racially-
16 motivated and deficient. FAC ¶¶ 54-56, 58-60, 63-65, 94-108, 110-115. These
17 allegations are not sufficiently similar to the “subject matter of the litigation” and not
18 relevant to policies or customs concerning the alleged constitutional violations in this
19 case. *Neveu*, 392 F. Supp. 2d at 1170. In addition, Plaintiffs do not allege a *Monell* equal
20 protection claim in this action. See FAC; see also *Jenkins v. City of Vallejo*, 2025 WL
21 2410992, at *5 n.5 (E.D. Cal. Aug. 20, 2025). The Court GRANTS Defendants’ motion
22 to strike paragraphs 54-56, 58-60, 63-65, 94-108, and 110-115.

23 **4. Allegations Relating to the Vallejo Police Department’s “Badge**
24 **Bending” Practice**

25 Paragraphs 66-69 and 79-93 relate to allegations of the Vallejo Police
26 Department’s “badge bending” practice of bending the star tip of the badge of officers
27 who were involved in an on-duty shooting. FAC ¶¶ 66-69, 79-93. Though there are no
28 allegations of an officer-involving shooting in this action, the allegations related to the

1 Vallejo Police Department's badge bending practice is sufficiently connected to Plaintiffs' 2 *Monell* claim based on a practice or custom theory. See generally FAC; *Neveu*, 392 F. 3 Supp. 2d at 1170. The Court also notes that Defendants have not moved to strike the 4 FAC's reference to the badge bending practice in the "Monell Allegations" section. See 5 Defs. Mot.; FAC ¶ 157. The Court DENIES Defendants' motion to strike paragraphs 66- 6 69 and 79-93.

7 **5. Allegations Relating to 2019 Deadly Force Incident**

8 Paragraph 57 relates to a prior incident in 2019 involving Vallejo police officers 9 who shot and killed the victim by shooting the victim 55 times while he was asleep in his 10 car in a drive through and the subsequent media coverage thereafter. FAC ¶ 57. These 11 allegations relating to a prior incident are not sufficiently similar to the allegations in this 12 matter because the prior incident involves the use of deadly force which is not alleged 13 here. See *Bagos*, 2020 WL 6043949, at *6; *Bryan*, 630 F.3d at 825. The Court GRANTS 14 Defendants' motion to strike paragraph 57.

15 **6. Allegations Relating to Other Incidents**

16 Paragraphs 75-77, and 130-150 relate to allegations of harassment by Vallejo 17 Police Department employees of critics and families of victims; the hiring of police 18 lieutenant Nichelini based on nepotism; the resignation of City Attorney Trujillo; a 19 contract entered into by Defendant City of Vallejo with Truleo, a company that conducts 20 audits of police body cameras and the discovery of "potentially unprofessional conduct;" 21 a subsequent vote of no confidence in Police Chief Shawny Williams and his subsequent 22 forced departure from the police department due to racial threats and harassment; and 23 the public dissent regarding Defendant Chief Ta's hiring as Police Chief. FAC ¶¶ 75-77, 24 130-150. These allegations are not sufficiently similar to the "subject matter of the 25 litigation" and are not sufficiently connected to similar constitutional violations alleged 26 here. *Neveu*, 392 F. Supp. 2d at 1170. The Court GRANTS Defendants' motion to strike 27 paragraphs 75-77, and 130-150.

28 ///

1 **7. Allegations Related to California Attorney General's Stipulated**
 2 **Agreement with City of Vallejo**

3 Paragraph 109 relates to a stipulated agreement entered into by the California
 4 Attorney General's Office and Defendant City of Vallejo in October 2023 for the failure to
 5 report threats received by Captain Whitney and Chief Williams and for failure to
 6 investigate potentially unqualified Vallejo police officers. FAC ¶ 109. These allegations
 7 have the potential to support *Monell* liability based on Defendant City of Vallejo having a
 8 pattern, custom, and/or practice of being deliberately indifferent to constitutional
 9 violations by the Vallejo Police Department. See *Anderson v. Warner*, 451 F.3d 1063,
 10 1070 (9th Cir. 2006) ("To impose liability under *Monell*, a plaintiff must show that (1) he
 11 was deprived of a constitutional right; (2) the municipality has a policy; (3) the policy
 12 amounts to deliberate indifference to plaintiff's constitutional rights; and (4) the policy is
 13 the moving force behind the constitutional violation."). The Court therefore DENIES
 14 Defendants' motion to strike paragraph 109.

15 **8. Allegations Related to the City Attorney's Office**

16 Paragraphs 116-129, and 151 relate to allegations of destruction of evidence and
 17 discovery misconduct and generalized allegations of concealing misconduct by the
 18 Vallejo City Attorney's Office. FAC ¶¶ 116-129, 151. These allegations are not
 19 sufficiently similar to the "subject matter of the litigation," and are not sufficiently
 20 connected to similar constitutional violations alleged or to the *Monell* claim alleged.
 21 *Neveu*, 392 F. Supp. 2d at 1170. The Court GRANTS Defendants' motion to strike
 22 paragraphs 116-129, and 151.

23 **9. Prayer for a Consent Decree**

24 Plaintiffs do not oppose striking their prayer for a consent decree. See *generally*
 25 Pls. Opp'n. The Court GRANTS Defendants' motion to strike Plaintiffs' prayer for a
 26 consent decree.

27 **10. Conclusion**

28 Accordingly, the Court GRANTS IN PART AND DENIES IN PART Defendants'

1 motion to strike. Defendants' motion to strike paragraphs 48, 53-65, 70-78, 94-108, 110-
2 151, and the prayer for a consent decree, is GRANTED. Defendants' motion to strike
3 paragraphs 49-52, 66-69, 79-93 and 109 is DENIED.

4 **B. Motion to Dismiss**

5 **1. Defendant Chief Ta**

6 Defendants seek to dismiss all claims against Defendant Chief Ta, who is sued in
7 his official capacity only. Defs. Mot. at 3. Defendants argue Defendant Chief Ta is a
8 redundant defendant because the claims against Defendant Chief Ta are in his official
9 capacity only and are duplicative of the claims against Defendant City of Vallejo. *Id.*
10 (citing *Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles Cnty. Sheriff Dep't*, 533 F.3d 780,
11 799 (9th Cir. 2008)). The Court GRANTS Defendants' motion to dismiss Plaintiffs' claims
12 against Defendant Chief Ta in his official capacity.

13 At the hearing, Plaintiffs argued they could plead facts to establish supervisory
14 liability under Section 1983 against Defendant Chief Ta in his individual capacity.
15 Accordingly, Plaintiffs will be provided an opportunity to amend their FAC, if they can, to
16 allege specific facts demonstrating Defendant Chief Ta's connection to or involvement in
17 the alleged violations.

18 **2. *Monell* Claim (Fourth Cause of Action)**

19 Defendants also argue that Plaintiffs have alleged irrelevant, vague and
20 conclusory allegations that are insufficient to state a cognizable *Monell* claim. Defs. Mot.
21 at 8-9. Plaintiffs argue they have established a cognizable *Monell* claim based on the
22 following theories: (1) ratification by a final policymaker, Defendant Chief Ta; and (2) a
23 custom, practice, and/or policy based on a showing of 150 prior incidents of police
24 misconduct, concealment of these prior incidents, and failure to discipline or train any of
25 the involved officers in the prior incidents. Pls. Opp'n at 11-14.

26 42 U.S.C. § 1983 "provides a cause of action for the deprivation of any rights,
27 privileges, or immunities secured by the Constitution and laws of the United States."
28 *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 508 (1990) (internal quotation marks

omitted). Section 1983 claims must demonstrate the defendant (1) acted under color of state law; and (2) caused a plaintiff to be deprived of a right secured by the Constitution or laws of the United States. See *Lindke v. Freed*, 601 U.S. 187, 194 (2024). Under *Monell*, “[a] government entity may not be held liable under 42 U.S.C. § 1983, unless a policy, practice, or custom of the entity can be shown to be a moving force behind a violation of constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monell*, 436 U.S. at 694). There is no respondeat superior liability under § 1983. *Monell*, 436 U.S. at 691-94. The Ninth Circuit recognizes four theories that establish municipal liability under *Monell*: “(1) an official policy; (2) a pervasive practice or custom; (3) a failure to train, supervise, or discipline; or (4) a decision or act by a final policymaker.” *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 602-03 (9th Cir. 2019). “Cases often refer to the fourth theory as ratification by a final policymaker.” *Est. of Temple v. Placer Cnty. Sheriff's Off.*, 2024 WL 3742920, at *4 (E.D. Cal. Aug. 9, 2024) (internal quotation and citation omitted).

a. *Monell Claim Based on a Ratification Theory*

Plaintiffs allege *Monell* liability against Defendant City of Vallejo based on allegations that Defendant Chief Ta, as the final policymaker, knew of the custom and practice of using excessive force by Vallejo police officers. Pls. Opp'n at 11. Plaintiffs allege that:

Chief Ta, the final policymaker, the City Manager and the City Attorney's Office, knew of the custom, culture and practice of using excessive force by Vallejo Police Officers and excused their behavior by not initiating internal affairs overview of the incidents and/or directing them to dismiss the allegations without sufficient discipline or retraining and/or unlawfully concealing victim complaints from public scrutiny; concealing officer misconduct records; the longstanding practice of hiring officers who were disqualified from serving as police officers and/or refusal to terminate officers who did not pass background investigations; termination of misconduct review methods; and retaliation against people seeking to correct the constitutionally violative practices, including a former Vallejo Police Chief, Deputy Chief, and Captain. The voluminous amount of previously hidden misconduct allegations, which span a decade, demonstrate how deeply ingrained the constitutionally violative practices are and the degree to

1 which they have been ratified by the municipality, that would
2 rather fire whistleblowers than reform.

3 Pls. Opp'n at 11-12; see also FAC ¶¶ 152-168.

4 “[A] local government may be held liable under § 1983 when ‘the individual who
5 committed the constitutional tort was an official with final policy-making authority’ or such
6 an official ‘ratified a subordinate’s unconstitutional decision or action and the basis for
7 it.’” *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1250 (9th Cir. 2010), overruled on
8 other grounds by *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016) (citing
9 *Gillette v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir. 1992)). “The policymaker must have
10 knowledge of the constitutional violation and actually approve of it. A mere failure to
11 overrule a subordinate’s actions, without more, is insufficient to support a § 1983 claim.”
12 *Lytle v. Carl*, 382 F.3d 978, 987 (9th Cir. 2004) (citation omitted). “The policymaker must
13 have knowledge of the constitutional violation and must make a ‘conscious, affirmative
14 choice’ to ratify the conduct at issue.” *Garcia v. City of Imperial*, 2010 WL 3911457, at *1
15 (S.D. Cal. Oct. 4, 2010) (citing *Lytle*, 382 F.3d at 987).

16 Here, Plaintiffs’ FAC provides conclusory allegations that Defendant Chief Ta
17 ratified unconstitutional conduct of his subordinates. See FAC ¶¶ 152-168; see also Pls.
18 Opp’n at 11-12. As pled, this is insufficient to state a cognizable *Monell* claim. In
19 addition, Plaintiffs also appear to generally allege multiple individuals as final
20 policymakers. See FAC ¶¶ 152 (“[T]he Vallejo Police Department ratifies officers’
21 unconstitutional behaviors which continue because they go by unchecked.”), 158 (“the
22 City’s failure to investigate, control, supervise, and discipline...ratifies [Vallejo police
23 officers’] unlawful behavior.”), 166 (“Vallejo Police Department’s longterm failure to
24 investigate complaints of misconduct...is a proximate result of the Vallejo Police
25 Department’s not only failure to properly supervise its Officers but subsequent ratification
26 of their unconstitutional conduct.”). The FAC, as pled, does not clearly allege who the
27 final policymaker is and does not allege that the final policymaker made a “conscious,
28 affirmative choice” to pursue a particular policy. *Garcia*, 2010 WL 3911457, at *1; see

1 also *Gillette*, 979 F.2d at 1347.

2 Accordingly, the Court GRANTS Defendants' motion to dismiss Plaintiffs' *Monell*
3 claim on the basis of a ratification theory. The Court will grant Plaintiffs leave to amend
4 because additional allegations may permit a cognizable *Monell* claim under a ratification
5 theory against Defendant City of Vallejo.

6 b. *Monell Claim Based on a Practice or Custom Theory*

7 Plaintiffs contend that Defendant City of Vallejo has an "informal policy" of
8 "repeated constitutional violations" that establishes *Monell* liability based on a practice or
9 custom. Pls. Opp'n at 12-13. Plaintiffs argue the 150 incidents alleged in the FAC are
10 sufficient to establish a pattern of police misconduct, failure to investigate, and failure to
11 discipline or retrain involved officers. *Id.* at 13-14.

12 "[A] plaintiff may be able to prove the existence of a widespread practice that,
13 although not authorized by written law or express municipal policy, is 'so permanent and
14 well settled as to constitute a custom or usage with the force of law.'" *City of St. Louis v.*
15 *Praprotnik*, 485 U.S. 112, 127 (1988) (*quoting Adickes v. S. H. Kress & Co.*, 398 U.S.
16 144, 168 (1970)). Liability for an improper custom may not be premised on isolated or
17 sporadic incidents, but rather it must be founded on practices of "sufficient duration,
18 frequency and consistency that the conduct has become a traditional method of carrying
19 out policy." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). The Ninth Circuit has
20 "long recognized that a custom or practice can be inferred from widespread practices or
21 evidence of repeated constitutional violations for which the errant municipal officers were
22 not discharged or reprimanded." *Hunter v. Cnty. of Sacramento*, 652 F.3d 1225, 1233
23 (9th Cir. 2011) (internal quotation marks and citation omitted).

24 Plaintiffs have identified multiple prior instances of alleged misconduct by
25 Defendant City of Vallejo in the FAC. Even without the stricken allegations, the FAC
26 sufficiently alleges a custom or practice of police misconduct, failure to investigate, and
27 failure to discipline or retrain involved officers. Plaintiffs' allegations plausibly show a
28 custom or practice of Defendant City of Vallejo that is "permanent and well settled."

1 *Adickes*, 398 U.S. at 167-68. These allegations sufficiently allege that Defendant City of
2 Vallejo had an unconstitutional custom or practice of police misconduct, failure to
3 investigate, and failure to discipline or retrain involved officers.

4 Accordingly, the Court DENIES Defendants' motion to dismiss Plaintiffs' *Monell*
5 claim on the basis of a custom or practice theory.

6 **IV. CONCLUSION**

7 In conclusion, IT IS HEREBY ORDERED that:

- 8 1. Defendants' motion to strike (ECF No. 10) is GRANTED IN PART AND
9 DENIED IN PART.
 - 10 a. Defendants' motion to strike paragraphs 48, 53-65, 70-78, 94-108,
11 110-151, and the prayer for a consent decree, is GRANTED; and
 - 12 b. Defendants' motion to strike Paragraphs 49-52, 66-69, 79-93 and
13 109 is DENIED.
- 14 2. Defendants' motion to dismiss (ECF No. 10) is GRANTED IN PART AND
15 DENIED IN PART:
 - 16 a. Defendants' motion to dismiss Plaintiffs' claims against Defendant
17 Chief Ta in his official capacity is GRANTED with leave to amend.
18 Plaintiffs are granted leave to amend as to claims against Defendant
19 Chief Ta in his individual capacity only. Plaintiffs shall file their
20 amended complaint within thirty (30) days from the date of this
21 order. Failure to timely file an amended complaint consistent with
22 this order will be construed as Plaintiffs' consent to proceed with the
23 dismissal of these claims.
 - 24 b. Defendants' motion to dismiss Plaintiffs' *Monell* claim (fourth cause
25 of action) is GRANTED IN PART AND DENIED IN PART. Plaintiffs'
26 *Monell* claim on the basis of a custom or practice theory may
27 proceed. Plaintiffs' *Monell* claim on the basis of a ratification theory
28 is DISMISSED with leave to amend. Plaintiffs shall file their

1 amended complaint within thirty (30) days from the date of this
2 order. Failure to timely file an amended complaint consistent with
3 this order will be construed as Plaintiffs' consent to proceed with the
4 dismissal of this claim.

5 3. Within 30 days of this Order, Plaintiffs must either file: (a) a Second Amended
6 Complaint consistent with this order regarding the claims against Defendant
7 Chief Ta in his individual capacity and a *Monell* claim based on a ratification
8 theory, if Plaintiffs can allege such claims, and removing the stricken
9 allegations; or (b) a Final FAC that removes the stricken allegations and
10 dismissed claims.

11
12 Dated: October 15, 2025


13 CHI SOO KIM
14 UNITED STATES MAGISTRATE JUDGE

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